

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	NAL/Acct. No. MB-201741410009
)	
Cumulus Licensing, LLC)	FRN: 0002834810
)	
Licensee of Stations)	
WDAI(FM), Pawleys Island, SC)	Facility I.D. No. 59490
)	
WSYN(FM), Surfside Beach, SC)	Facility I.D. No. 46964
)	
WSEA(FM), Atlantic Beach, SC)	Facility I.D. No. 3221
)	
WLFF(FM), Conway, SC)	Facility I.D. No. 63932
)	
WHSC(AM), Conway, SC)	Facility I.D. No. 17484

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 11, 2017

Released: December 11, 2017

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Cumulus Licensing LLC (Cumulus), licensee of South Carolina broadcast stations WDAI(FM), Pawleys Island; WSYN(FM), Surfside Beach; WSEA(FM), Atlantic Beach; WLFF(FM), Conway, and WHSC(AM), Conway,¹ (Stations), apparently willfully and repeatedly violated the Commission's equal employment opportunity (EEO) rules by failing to comply with the recruitment, self-assessment, record-keeping, reporting, and public file requirements.² We conclude that Cumulus is apparently liable for a monetary forfeiture of twenty thousand dollars (\$20,000) for these violations.

II. BACKGROUND

2. This case implicates a number of the Commission's EEO rules, including:

- Section 73.2080(c)(1), which requires a licensee to use recruitment sources for each full-time vacancy;
- Section 73.2080(c)(1)(ii), which requires a licensee to provide notification of each vacancy to any organization that distributes information about employment

¹ WHSC(AM) changed its call sign from WIQB(AM) on April 30, 2010.

² See 47 CFR §§ 73.2080(c)(1), 73.2080(c)(1)(ii), 73.2080(c)(3), 73.2080(c)(5)(v), 73.2080(c)(6)(iv), and 73.3526(e)(7).

opportunities to job seekers upon request by such organization;

- Section 73.2080(c)(5)(v), which requires a licensee to retain records to document the total number of interviewees for each of its vacancies and the referral source for each interviewee;
- Section 73.2080(c)(6)(iv), which requires a licensee to include in its public file report the number of interviewees and the number of interviewees referred by each recruitment source;
- Section 73.2080(c)(3), which requires a licensee to analyze the recruitment program for its employment unit on an ongoing basis to ensure that the program is effective in achieving broad outreach to potential applicants, and to address any problems found as a result of its analysis; and
- Section 73.3526(e)(7), which requires a commercial licensee to include certain EEO-related materials in its public inspection file.

3. By letter dated March 29, 2011, the Media Bureau notified Cumulus that the Stations had been randomly selected for an audit of its EEO program.³ The Bureau has before it Cumulus' response to the audit and the attached public file reports for the periods of August 1, 2008 through July 31, 2009 and August 1, 2009 through July 31, 2010.⁴

III. DISCUSSION

A. EEO Rule Violations

4. Our review of Cumulus' response and the accompanying public file reports reveals various violations of the EEO rules. First, we find that Cumulus apparently violated, on numerous occasions, the Section 73.2080(c)(1) requirement that broadcasters recruit for every full-time vacancy at a station. Cumulus' 2008-2009 report indicates that it failed to report any recruitment sources for three of the five full-time hires listed in the report. For one of the remaining two full-time hires, Cumulus reports word-of-mouth as the only recruitment source. The 2009-2010 report similarly lists a word-of-mouth referral as the sole recruitment source for two of the six full-time hires listed in the report. Relying solely on a licensee's own private contacts, such as word-of-mouth referrals, does not constitute recruitment under the Commission's rules, which require public outreach.⁵ We therefore find that Cumulus failed to recruit for six of its 11 full-time vacancies over a two-year period, in apparent violation of Section 73.2080(c)(1).

5. Second, we find that Cumulus apparently violated Section 73.2080(c)(1)(ii) by failing to notify a source that had requested notification of vacancies at the Stations.⁶ Specifically, for both reporting periods, Cumulus indicates that Ohio Center for Broadcasting requested notification of full-time

³ Letter from Lewis Pulley, Assistant Chief, Policy Division, to Cumulus Licensing, LLC (March 29, 2011).

⁴ Letter from Elizabeth E. Goldin, Counsel to Cumulus Licensing, to Lewis Pulley, Assistant Chief, Policy Division (May 23, 2011) (Cumulus May 23, 2011 Letter). Cumulus' May 23, 2011 response acknowledges Cumulus as licensee for all of the Stations named in the Commission's EEO audit letter. Two other stations were part of the employment unit at the time the audit letter was sent, WXJY(FM), Conway, South Carolina (Facility I.D. No. 69835), and WJXY-FM, also in Conway (Facility I.D. No. 17485). Joule Broadcasting, LLC, subsequently became the licensee of both stations, and renewal applications were granted for both stations in December 2016. Consequently, the audit of WXJY(FM) and WJXY-FM has been terminated.

⁵ *New Northwest Broadcasters LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd 10748, 10749 (MB 2006) (forfeiture paid) (*New Northwest*).

⁶ *CMP Houston-KC, LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 8900, 8901 (MB 2009) (forfeiture paid).

vacancies, but Cumulus' records show that it failed to notify this source of seven of its 11 full-time hires during the reporting period, starting with its first full-time hires in 2008 and ending with the last two full-time hires reported in 2010.

6. Third, we find that Cumulus failed to retain records of the number or source of its interviewees for 10 of the 11 full-time vacancies during the reporting periods, in apparent violation of Section 73.2080(c)(5)(v), which specifically requires retention of these records.⁷ Both the 2008-2009 and 2009-2010 reports contain a footnote stating that "due to unauthorized removal of documentation from its facilities, this [Station Employment Unit] is unable to fully detail its recruitment efforts as well as interviewee data per vacancy."⁸ Cumulus further reports that it lost the majority of its records relating to recruitment for the reporting periods at issue after the dismissal of the unit's business manager in November 2010.⁹ Although Cumulus provides an explanation for its inability to produce the required records, this does not excuse it from having violated our rules.¹⁰

7. Fourth, we find that Cumulus' failure to maintain records of the number of interviewees or referral source of each interviewee left it unable to include in its EEO public file report the total number of interviewees or the number of interviewees referred by each recruitment source, resulting in an apparent violation of Section 73.2080(c)(6)(iv).¹¹ Fifth, because Cumulus lacks records of the number or referral source of its interviewees, it was not possible for it to have adequately analyzed its recruitment program to ensure that it was effective in achieving broad outreach, an apparent violation of Section 73.2080(c)(3). Finally, Cumulus' lack of required records left it unable to include information concerning the number or referral source of interviewees in its public inspection files, which it is required to do pursuant to Section 73.3526(e)(7).

B. Proposed Forfeiture

8. We propose a total forfeiture of \$20,000 for the apparent rule violations enumerated above. This forfeiture is issued pursuant to Section 503(b)(1)(B) of the Communications Act of 1934, as amended (the Act).¹² Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty. Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹³ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹⁴ and the Commission has so interpreted the term in the Section 503(b) context.¹⁵ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."¹⁶

⁷ 47 CFR § 73.2080(c)(5)(v).

⁸ Cumulus May 23, 2011 Letter..

⁹ Cumulus May 23, 2011 Letter, page 1.

¹⁰ See *New Northwest*, 21 FCC Rcd at 10749.

¹¹ 47 CFR § 73.2080(c)(6)(iv).

¹² 47 U.S.C. § 503(b)(1)(B). See also 47 CFR § 1.80(a)(1).

¹³ 47 U.S.C. § 312(f)(1).

¹⁴ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁵ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁶ 47 U.S.C. § 312(f)(2).

9. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the rules do not establish base forfeiture amounts for specific EEO violations, such as a failure to self-assess EEO performance. Accordingly, we must look to pertinent precedent involving similar violations to determine the appropriate proposed forfeiture amount here. The *Forfeiture Policy Statement* does establish, however, a base forfeiture amount of \$1,000 for failure to maintain required records. In determining the appropriate forfeiture amount, we must consider the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹⁷

10. Based upon the facts before us, the factors noted above, and pertinent precedent, we propose a \$6,000 forfeiture for Cumulus' apparent willful and repeated violations of Section 73.2080(c)(1). We consider these violations of our rule requiring licensees to recruit to every full-time vacancy to be the most significant violations associated with this EEO audit.¹⁸ As explained above, our review of Cumulus' audit response revealed a total of six apparent violations of our recruitment rule, and we propose a forfeiture of \$1,000 for each violation. In addition, we propose a \$2,000 forfeiture for each of the other five rules that Cumulus apparently violated during the reporting periods, which amounts to \$10,000.¹⁹ As explained above, Cumulus apparently violated each of these rules multiple times during the two reporting periods at issue. When added to the \$6,000 forfeiture for the violation of the recruitment rule, this amounts to a total proposed forfeiture of \$16,000.

11. Cumulus Licensing, LLC has a history of violations relating to the EEO rules. In two previous decisions, Cumulus licensees were found to have committed EEO violations, one involving record-keeping deficiencies²⁰ and the other involving recruiting, record-keeping, and reporting violations.²¹ Despite these prior findings, Cumulus continued violating EEO rules even after they were issued. Because Cumulus was found to have violated EEO rules on two occasions in two employment units, and now has been found to have violated the EEO rules in yet another unit for another two-year period even after being penalized for prior violations, we find that it has engaged in a "history of prior offenses" as delineated in the *Forfeiture Policy Statement* noted above. We are therefore adding an

¹⁷ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(4).

¹⁸ As the Commission stated in the Order creating the EEO rules in 2002, the primary purposes of the rules are to prevent discrimination and to promote broad outreach in recruiting for job vacancies at stations. *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Second Report and Order and Third Notice of Proposed Rule Making, 17 FCC Rcd 24018, 24020, 24043 (2002). *See also Inland Empire Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2656 (MB 2007) (proposing a \$4,500 forfeiture for a licensee's violation of Section 73.2080(c)(1) and a \$500 forfeiture for the violation of Section 73.2080(c)(3) because it had failed to recruit for four of its 10 full-time vacancies by relying solely on referrals, and accordingly, also failed to self-assess its EEO program); *Liberian Television of Dallas License Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2032 (MB 2007) (proposing a \$20,000 forfeiture for a licensee's numerous EEO violations, including a \$10,000 forfeiture for violations of 73.2080(c)(1), because licensee had failed to recruit adequately for 30 of 54 vacancies, maintain required EEO records, list the recruitment source of interviewees or hires, self-assess adequately, notify all sources of openings that had requested notification, or place its public file report in its public file); *New Northwest*, 21 FCC Rcd at 10751.

¹⁹ These rules are: (1) Section 73.2080(c)(1)(ii), (2) Section 73.2080(c)(5)(v), (3) Section 73.2080(c)(6)(iv), (4) Section 73.2080(c)(3), and (5) Section 73.2080(c)(6)(iv).

²⁰ *See In the Matter of Cumulus Licensing, LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 18433 (2008).

²¹ *See Letter to Richard Denning, Esq., from Lewis Pulley, Federal Communications Commission, Assistant Chief, Policy Division*, 23 FCC Rcd 4471 (MB 2008) (admonishing Cumulus for EEO violations).

upward adjustment of \$4,000, pursuant to the Act and Section 1.80(b)(8) of the Commission's rules.²² We thus propose a total forfeiture of \$20,000.

12. In order to help deter future violations, we also impose reporting conditions. Specifically, the Stations are required to submit to the Bureau's EEO Staff annual reports for three years starting on September 4, 2018, as specified below, that include the unit's most recent EEO public file report; dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing each full-time vacancy for the preceding reporting year; the recruitment source that referred the hiree for each full-time vacancy, the job title of each full-time vacancy filled, and the date each full-time vacancy was filled; a list of all sources that requested job notifications from the employment unit for jobs posted during the reporting periods listed below; the total number of interviewees for each full-time vacancy for the preceding reporting year and the referral source for each interviewee; and the sources contacted for each full-time opening during the reporting year. These conditions are designed to ensure that Cumulus and any successor licensee of any of the Stations maintain an adequate EEO program in compliance with the rules. The reporting conditions will apply to the above-captioned Stations, and to all other stations that are part of their employment unit in the future, if any.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules, that Cumulus Licensing LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of \$20,000 for its apparent willful and repeated violation of Sections 73.2080(c)(1), 73.2080(c)(1)(ii), 73.2080(c)(3), 73.2080(c)(5)(v), 73.2080(c)(6)(iv), and 73.3526(e)(7) of the Commission's Rules.

14. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Cumulus Licensing LLC, Inc SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the *NAL*/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²³ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

16. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554, ATTN: Lewis Pulley, Assistant Chief, Policy Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

²² 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8), Note § II (articulating criteria for upward adjustments (egregious misconduct, ability to pay/relative disincentive, intentional violation, substantial harm, prior violations of any FCC requirements, substantial economic gain, and repeated or continuous violation). See also *In the Matter of Capstar TX Limited Partnership*, 23 FCC Rcd 10464, 10465 (MB 2008).

²³ See 47 CFR § 1.1914.

17. The Bureau will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the respondent’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. IT IS FURTHER ORDERED that Cumulus Licensing LLC and any successor licensee of any of the Stations,²⁴ WDAI(FM), WSYN(FM), WSEA(FM), WLFF(FM), and WHSC(AM), SHALL SUBMIT to the Federal Communications Commission, Media Bureau, EEO Staff, an original and one copy of the following information on September 4, 2018; September 3, 2019, and September 1, 2020, with respect to those and all other stations that may be in the employment unit of the Station(s):

- (a) the unit’s most recent EEO public file report;
- (b) dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing each full-time vacancy for the preceding reporting year;
- (c) the recruitment source that referred the hiree for each full-time vacancy, the job title of each full-time vacancy filled, and the date each full-time vacancy was filled;
- (d) a list of all sources that requested job notifications from the employment unit for jobs posted during the reporting periods listed above;
- (e) the total number of interviewees for each full-time vacancy for the preceding reporting year and the referral source for each interviewee; and
- (f) the sources contacted for each full-time opening during the reporting year.

19. IT IS FURTHER ORDERED that, pursuant to Section 73.3526(e)(10) of the Commission’s Rules, that Cumulus Licensing, LLC, shall place a copy of this *NAL* in the public inspection files of Stations WDAI(FM), WSYN(FM), WSEA(FM), WLFF(FM), and WHSC(AM).

20. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Andrew Kersting, Counsel for Cumulus Licensing.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau

²⁴ In the event of an assignment of any of the Stations, this continuing obligation will run to the assignee with regard to each Station assigned.